

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20548

FILE: B-209279

DATE: October 20, 1982

MATTER OF: International Business Services, Inc.

DIGEST:

The selection of a contractor for award of a subcontract under section 8(a) of the Small Business Act is basically within the discretion of the contracting agency and the Small Business Administration (SBA) and will not be questioned absent a showing of fraud or bad faith on the part of Government officials or an allegation that SBA regulations were violated. The protest is dismissed.

International Business Services, Inc. (IBS), protests the proposed selection of another company by the Small Business Administration (SBA) for the award of a contract under section 8(a) of the Small Business Act, 15 U.S.C. § 637(a) (Supp. III, 1979). IBS contends that since it has been the incumbent subcontractor for the last 3 years as the result of a section 8(a) award, it is better qualified than the proposed subcontractor to perform this contract. IBS also contends that the choice of another section 8(a) firm results from irregularities in the selection process and bias on the part of the contracting officer against IBS.

The protest is dismissed.

The following background information is drawn from the protester's submission. The subject contract is for provision of computer facilities' management, word processing services, and computer maintenance services for the National Oceanic and Atmospheric Administration's Atlantic Oceanographic and Meteorological Laboratories Computer Center in Miami, Florida. IBS has been performing these services since October 1, 1979, as a subcontractor to the SBA under the auspices of the 8(a) program. In May 1982, the SBA nominated IBS to continue performance for an additional 3 years under the 8(a) program. However, since a question arose as

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to IBS's size status and eligibility for participation in the 8(a) program and the SBA's Size Appeals Board ruled that IBS was "other than small business," the SBA notified the contracting agency that it withdrew its nomination of IBS.

Thereafter, the contracting officer invited three eligible 8(a) firms to submit technical proposals for evaluation and selection of an 8(a) subcontractor. IBS was also invited to submit a technical proposal. Negotiations were held with IBS and the other three firms. During this period, the SBA reinstated IBS to the 8(a) program under interim rules providing an additional 6 months of eligibility for firms in IBS's circumstances. Even though IBS had been reinstated to the 8(a) program, the contracting officer selected one of the other 8(a) firms for this contract and suggested to the SBA that the selected firm be nominated as the choice for subcontractor.

IBS charges that this entire selection process was fraught with improprieties, that the process was tainted by the contracting officer's bias against IBS, and that IBS--as the incumbent subcontractor--should have been nominated because of its superior qualifications and experience.

Section 8(a) of the Small Business Act authorizes the SBA to enter into contracts with any Government agency with procuring authority and to arrange the performance of such contracts by letting subcontracts to socially and economically disadvantaged small business concerns. The contracting officer is authorized "in his discretion" to let contracts to SBA upon such terms and conditions as may be agreed upon by the procuring agency and SBA. Microtech Industries, Inc., B-205077, October 26, 1981, 81-2 CPD 346. The selection of an 8(a) contractor is basically within the broad discretion of the SBA and the contracting agency, and we will not question such decisions unless fraud or bad faith on the part of the Government officials can be shown or it is alleged that the SBA did not follow its own regulations. J. R. Pope, Inc., B-204230, August 10, 1981, 81-2 CPD 114.

Here, the protester has presented no evidence of fraud on the part of Government officials. Moreover, the protester bears a very heavy burden of proof when alleging bad faith on the part of Government officials. Anigroeg Services, Inc., B-206362.2, March 15, 1982, 82-1 CPD 241. To show that the contracting officer or SBA officials have acted in bad faith, the protester would have to present irrefutable proof that these officials had a specific and malicious intent to injure IBS. Kalvar Corporation, Inc. v. United States, 543 F.2d 1295, 1301 (Ct. Cl. 1976). Although IBS strongly disagrees with the contracting officer's determination to select another 8(a) firm, no proof has been presented by IBS that the selection resulted from bad faith. Further, there is no allegation that SBA violated its regulations.

Accordingly, the protest is dismissed.

Harry R. Van Cleve
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Acting General Counsel